IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 4062 of 2007(H)

OS.9/2000 of MUNISIFF-MAGISTRATE.COURT,THODUPUZHA

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PETITIONER:

P.N. SADASIVAN PILLAI, AGED 81,
RESIDING AT NARIANAL MADAM, AANAKOODU ROAD,
THODUPUZHA.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SRI.M.S.NISHAD

RESPONDENTS:
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1. KARTHIYAYANI,
RESIDING AT NARIANAL VEEDU, THODUPUZHA KARA,
THODUPUZHA VILLAGE, THODUPUZHA.

2. BHASINI V.NAIR, W/O. VIJAYAN,
RESIDING AT MANIMANDIRAM HOUSE, THODUPUZHA KARA,
THODUPUZHA VILLAGE, THODUPUZHA.

3. VALSALA, W/O.LATE NARAYANAN NAIR,
RESIDING AT KAROTTU NARIANAL HOUSE,
AANAKOODU ROAD, THODUPUZHA.

4. C. GOVINDAN NAIR,
S/O.LATE NARAYANAN NAIR AT -DO- -DO-.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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W.P.(C)NO.4062 OF 2007

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Dated this the 14th day of February 2007

JUDGMENT

The petitioner is the plaintiff in O.S.9 of 2000 on the file of Munsiff's Court, Thodupuzha. He filed objection to Commissioner's report but his grievance is that vide Ext.P6 order the court recorded that objection was filed and ordered the suit to be posted in the list to 6.2.2007. The petitioner himself filed W.P.(C)10081/06 earlier and obtained an order to have the suit disposed of before September, 2006. It was for reason of the delay in the Commissioner filing report that the case happened to be adjourned till January 2007. It is the case of the petitioner that when finally the commission report was filed on 5.1.2007 it was almost a replica of the commission report which has been set aside three years ago and that his objections to the commission report are on identical grounds on which he objected the report and plan filed in the first instance. His grievance is that he is bound to lose the case if the commission report and plan is not set aside. The prayers in the writ petition are the following:

i) issue a writ of prohibition or other appropriate writ order or direction refraining the Munsiff Court, Thodupuzha from proceeding with the Trial with Ext.P3 commission report.

ii) Set aside the order dated 19.1.2007 (Ext.P6) to the extent that is included the case in the special list for trial.

iii) Direct the Munsiff's Court, Thodupuzha to appoint a senior surveyor on its panel for measuring the properties in accordance with the map and the plan.

iv) Direct the Munsiff's Court, Thodupuzha to finally dispose of the suit itself as expeditiously as possible considering the advanced age and infirmity of the petitioner and in view of the pendency of the suit for the last more than six years.

v) Issue such other writ order or direction, as this Hon'ble Court may deem fit and proper to meet the ends of justice.

2. Here again prayer no.4 is to direct the Munsiff to finally dispose of the suit as expeditiously as possible considering the advanced age and infirmity of the petitioner and in view of the pendency of the suit for the last more than six years when invariably the other prayers he asks for are necessarily to protract the litigation.

In the circumstances, I dispose of this writ petition with the following directions:

After trial if the court finds that the commission report deserves to be set aside upholding the objections of the petitioner/plaintiff, it shall proceed to set aside the commission report giving an opportunity to the plaintiff to have a fresh commission issued without disposing of the suit itself. All the same, if the court finds that there is no merit in the objection the court below will be at liberty to dispose of the suit itself without remitting back the commission report as desired by the petitioner.

K.P.BALACHANDRAN, JUDGE

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